



Entered on Docket  
June 02, 2009

A handwritten signature in dark ink, appearing to read "Linda B. Riegle".

Hon. Linda B. Riegle  
United States Bankruptcy Judge

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**ATTORNEYS FOR FORD ELSAESSER,  
CHAPTER 11 TRUSTEE**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

**JOSEPH D. MILANOWSKI,**  
  
Debtor.

Chapter 11 – Involuntary

Case No. BK-S-07-13162-LBR

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
SUPPORTING AGREED ORDER  
GRANTING MOTION BY FORD  
ELSAESSER, THE CHAPTER 11  
TRUSTEE FOR THE ESTATE OF  
JOSEPH D. MILANOWSKI, TO  
APPROVE THE SETTLEMENT  
AGREEMENT AND RELEASE  
PURSUANT TO RULE 9019 OF THE  
FEDERAL RULES OF BANKRUPTCY  
PROCEDURE**

This Court, having considered the *Motion By Ford Elsaesser, The Chapter 11 Trustee  
For The Estate Of Joseph D. Milanowski, to Approve the Settlement Agreement and Release*

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure [Docket No. 475] (the “Motion”) filed by Ford Elsaesser, the trustee (the “Trustee”) for the estate (the “Estate”) of Joseph D. Milanowski (the “Debtor”), and pursuant to the Motion, the *Declaration of Chapter 11 Trustee, Ford Elsaesser, Filed in Support of Motion by Ford Elsaesser, the Chapter 11 Trustee for the Estate of Joseph D. Milanowski, to Approve the Settlement Agreement and Release Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure* [Docket No. 476] (the “Trustee’s Declaration”), the proffer of the Trustee’s testimony and the arguments of counsel made at the hearing on April 10, 2009, now therefore makes the following findings of fact and conclusions of law pursuant to Rules 7052, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure<sup>1</sup>:

### Findings of Fact

A. Notice of the Motion (“Notice”) was properly served on all creditors of the Estate, the United States Trustee and the Debtor.

B. The claims being settled are claims of the Estate against the Milanowski Parties.

C. The Trustee has investigated the merits of the claims against the Milanowski Parties, and has conducted such investigation as he deemed reasonable into the merits of the claims. The Trustee has inquired into the complexity of proving the claims, the duration of litigation or other means for prosecuting the claims, and has evaluated the difficulties of collection and the assets available to satisfy any future judgment arising from the claims.

D. Based upon this evaluation, the Trustee has recommended the Settlement Agreement as a fair and equitable compromise of the claims.

E. The Settlement Agreement, as modified below, is fair and equitable to the Estate.

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<sup>1</sup> Capitalized terms not defined herein have the meaning provided in the Motion.

1 F. The parties to the Settlement Agreement appeared at the hearing and agreed to the  
2 Court's modification of the Settlement Agreement.

3 G. There was no collusion, fraud or tortious conduct in connection with the  
4 negotiation and execution of the Settlement Agreement, and the Settlement Agreement was the  
5 product of arms-length good faith negotiation.  
6

7 H. The Settlement Agreement, as modified, is in the best interest of the creditors of  
8 the Estate.

9 **Conclusions of Law**

10 1. Notice is adequate under Rule 9019(a) of the Federal Rules of Bankruptcy  
11 Procedure.

12 2. The Trustee has standing to assert the claims being settled and has standing to  
13 bring this Motion.  
14

15 3. The Settlement Agreement is approved as modified by the addition of the  
16 following terms:

17 The Milanowski Parties warrant that they have disclosed to the Trustee all of their  
18 non-exempt assets.

19 Any failure by the Milanowski Parties to disclose any non-exempt assets with an  
20 aggregate value of greater than \$20,000 will be deemed a material breach of the  
21 Settlement Agreement and will invalidate and render unenforceable any and all  
22 releases, waivers, acquittals and cancellations granted to the Milanowski Parties  
23 by the Trustee on behalf of the Estate as set forth in the Settlement Agreement.  
24  
25  
26  
27  
28

5. Accordingly, the court approves the Settlement Agreement under Rule 9019 of the Federal Rules of Bankruptcy Procedure subject to the modification above.

5. Accordingly, the court approves the Settlement Agreement under Rule 9019 of the Federal Rules of Bankruptcy Procedure subject to the modification above.

6. A separate order will issue pursuant to Rule 9021 of the Federal Rules of Bankruptcy Procedure.

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PREPARED AND RESPECTFULLY SUBMITTED BY:

**COX SMITH MATTHEWS INCORPORATED**

By: /s/ Thomas Rice  
Deborah D. Williamson  
Texas State Bar No. 21617500  
Thomas Rice  
Texas State Bar No. 24025613

**ATTORNEYS FOR FORD ELSAESSER,  
CHAPTER 11 TRUSTEE**